TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 1039. 664

THE PEOPLE OF THE STATE OF CALIFORNIA,
PLAINTIFFS IN ERROR,

vs.

THE CENTRAL PACIFIC RAILROAD COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA.

FILED SEPTEMBER 28, 1886.

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JUDD & DETWEILER, PRINTERS, WASHINGTON.

Complaint.

In the Superior Court of the City and County of San Francisco, State of California.

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

THE CENTRAL PACIFIC RAILROAD COMPANY, Defendant.

Plaintiff avers that on the 15th day of August, in the year eighteen hundred and eighty-five, the State board of equalization assessed the franchise, roadway, road-bed, rails, and rolling-stock of the defendant at the sum of $22,000,000.00.

That the board apportioned the said assessment as follows:

To the county of Alameda the sum of $2,867,953.00.

To the county of Butte the sum of $1,545,233.

To the county of Fresno the sum of $2,096,710.

To the county of Merced the sum of $1,261,940.

To the county of Nevada the sum of $1,038,740.

To the county of Placer the sum of $3,871,668.

To the county of Sacramento the sum of $1,407,879.

To the county of San Joaquin the sum of $1,948,711.

2 To the county of Santa Clara the sum of $291,877.

To the county of Shasta the sum of $2,019,105.

To the county of Sierra the sum of $738,828.

To the county of Stanislaus the sum of $777,081.

To the county of Sutter the sum of $343,385.

To the county of Tehama the sum of $1,392,083.

To the county of Tulare the sum of $434,382.

To the county of Yuba the sum of $544,952;

And to the city and county of San Francisco the sum of $84,473.

That the defendant is indebted to plaintiff for State and county taxes for the year eighteen hundred and eighty-five in the following sums:

For State taxes in the sum of $119,680.00; for county taxes of the county of Alameda in the sum of $23,654.47; for county taxes of the county of Butte in the sum of $15,481.57; for county taxes of the county of Fresno in the sum of $24,237.97; for county taxes of the county of Merced in the sum of $15,849.97; for county taxes of the county of Nevada in the sum of $20,317.75; for county taxes of the county of Placer in the sum of $54,048.49; for county taxes of the county of San Francisco in the sum of $12,583.69; for county taxes of the county of San Joaquin in the sum of $10,727.14; for county taxes of the county of Santa Clara in the sum of

3 $1,802.25; for county taxes of the county of Shasta in the sum of $34,445.93; for county taxes of the county of Sierra in the sum of $1,665.55; for county taxes of the county of Stanislaus in the sum of $1,186.10; for county taxes of the county of Sutter in the sum of $2,080.91; for county taxes of the county of Tehama in the sum of $20,176.00; for county taxes of the county of Tulare in the sum of $4,152.69; for county taxes of the county of Yuba in

the sum of $8,037.00; for city and county taxes of the city and county of San Francisco in the sum of $886.04; with five per cent. added to each of said several sums for non-payment of taxes.

Plaintiff demands judgment for said several sums with five per cent. added thereto, and costs and counsel fees as allowed by law, and prays that an attachment may issue in form as prescribed in section five hundred and forty of the code of civil procedure.

D. M. DELMAS,
Attorney for Plaintiff and the Controller.

(Endorsed:) Filed M'ch 10th, 1886. James J. Flynn, clerk, by E. P. Casserly, deputy clerk.

4 *Summons.*

In the Superior Court in and for the City and County of San Francisco, State of California.

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,
vs.
THE CENTRAL PACIFIC RAILROAD COMPANY, Defendant.

Action brought in the superior court, city and county of San Francisco, State of California, and the complaint filed in said city and county of San Francisco, in the office of the clerk of said superior court.

The People of the State of California send greeting to the Central Pacific Railroad Company, defendant:

You are hereby required to appear in an action brought against you by the above-named plaintiff in the superior court, city and county of San Francisco, State of California, and to answer the complaint filed therein within ten days (exclusive of the day of service) after the service on you of this summons, if served within this county, or, if served elsewhere, within thirty days, or judgment by default will be taken against you, according to the prayer of said complaint.

5 The said action is brought to obtain a judgment against you for delinquent taxes for the year 1885, in the following sums: For State taxes in the sum of $119,650.00; for county taxes for the county of Alameda in the sum of $23,654.47; for the county of Butte in the sum of $15,481.57; for the county of Fresno in the sum of $24,237.97; for the county of Merced in the sum of $15,849.97; for the county of Nevada in the sum of $20,317.75; for the county of Placer in the sum of $54,048.49; for the county of Sacramento in the sum of $12,583.69; for the county of San Joaquin in the sum of $10,737.14; for the county of Santa Clara in the sum of $1,802.25; for the county of Shasta in the sum of $34,445.93; for the county of Sierra in the sum of $1,665.55; for the county of Stanislaus in the sum of $5,186.10; for the county of Sutter in the sum of $2,080.91; for the county of Tehama in the sum of $20,176.00; for the county of Tulare in the sum of $4,152.69; for the county of

Yuba in the sum of $8,037.00, and for city and county taxes of the city and county of San Francisco in the sum of $886.04, with five per cent. added to each of said several sums for non-payment of taxes and for costs and counsel fees, as provided by law; all of which is more particularly set out in the complaint herein, to which your attention is particularly directed. And you are hereby notified that if you fail to appear and answer the said complaint, as above required, the said plaintiff will take judgment against you for the sum of $375,013.47, with 5% added thereto, and also for costs and counsel fees as provided by law.

6

Given under my hand and the seal of the said superior court, at the city and county of San Francisco, State of California, this 10th day of March, in the year of our Lord one thousand eight hundred and eighty-six.

JAMES J. FLYNN, *Clerk*,
By E. P. CASSERLY, *Deputy Clerk*.

STATE OF CALIFORNIA,
City and County of San Francisco, } *ss:*

George Lezinsky, being duly sworn, deposes and says that he is and was, at and before the several times hereinafter mentioned, a citizen of the United States, over the age of eighteen years, a resident of the city and county of San Francisco, and not a party to the within-entitled action, and competent to be a witness on the trial thereof; that on the 10th day of March, 1886, he served the annexed summons on the defendant, The Central Pacific Railroad Company, a corporation, by delivering personally to and leaving with Edward H. Miller, Jr., as secretary of said corporation defendant, at the city and county of San Francisco, a copy of said summons attached to a copy of the complaint in said action.

7

GEO. LEZINSKY.

Subscribed and sworn to before me this 10th day of March, 1886.
[NOTARIAL SEAL.]
LEE D. CRAIG,
Notary Public.

(Endorsed:) Filed March 11, 1886. Jas. J. Flynn, clerk, by R. McCord, deputy clerk.

8 *Order Assigning Cause.*

In the Superior Court in and for the city and County of San Francisco, State of California.

THE PEOPLE, Plaintiff, *vs.* CEN. PAC. R. R., Defendant.

The above-entitled cause is assigned department No. 5.
Dated March 10th, A. D. 1886.

M. A. EDMUNDS,
Presiding Judge.

(Endorsed:) Filed March 10th, 1886. Jas. J. Flynn, clerk, by L. J. Welch, deputy clerk.

9 *Controller's Authorization to Bring Action.*

OFFICE OF THE STATE CONTROLLER.

I do hereby authorize and appoint D. M. Delmas, Esq., as attorney to begin in the proper court an action in the name of The People of the State of California against The Central Pacific Railroad Company to collect the delinquent taxes for the year 1885 upon the property of said company assessed by the board of equalization. I also authorize the said attorney to sue out attachments and to take all other steps necessary to the collection of said taxes.

Sacramento, March 1st, 1886.

JOHN P. DUNN,
Controller.

(Endorsed:) Filed Mar. 10, '86. Jas. J. Flynn, clerk, by L. J. Welch, deputy clerk.

10 *Answer of C. P. R. R. Co.*

In the Superior Court of the City and County of San Francisco, State of California.

THE PEOPLE OF THE STATE CALIFORNIA, Plaintiff,
vs.
THE CENTRAL PACIFIC RAILROAD COMPANY, Defendant. } No. 17239.

I.

The defendant, answering the complaint of the plaintiff in this action, alleges that before commencement of this action the said plaintiff commenced an action in this court against this defendant upon the said identical cause of action in the complaint in this present suit mentioned.

And this defendant further says that the parties in this and the former suit are the same, and not other or different parties, and that the said former suit so brought and prosecuted against it, the said defendant, by the said plaintiff, as aforesaid, is still pending and undetermined in this court.

11 II.

For a further, separate, and distinct answer to said complaint, defendant denies each and every allegation had, made, or contained therein.

Defendant denies that on the 15th day of August, in the year 1885, or at any other time, the State or any other board of equalization assessed the franchise, roadway, road-bed, rails, or rolling-stock, or any other property of defendant at the sum of $20,000,000.00 or any other sum.

Denies that said or any board apportioned said pretended or any assessment to the county of Alameda the sum of $2,867,953.00 or any other sum; to the county of Butte the sum of $1,545,000 or any other sum; to the county of Fresno the sum of $2,096,710.00 or any

other sum; to the county of Merced the sum of $1,261,940.00 or any other sum; to the county of Nevada the sum of $1,038,740 00 or any other sum; to the county of Placer the sum $3,871,668.00 or any other sum; to the county of Sacramento the sum of $1,407,879 or any other sum; to the county of San Joaquin the sum of
12 $1,948,711.00 or any other sum; to the county of Santa Clara the sum of $291,877 or any other sum; to the county of Shasta the sum of $2,019,105 or any other sum; to the county of Sierra the sum of $73,828 or any other sum; to the county of Stanislaus the sum of $777,081.00 or any other sum; to the county of Sutter the sum of $343,385.00 or any other sum; to the county of Tehama the sum of $1,392,083 or any other sum; to the county of Tulare the sum of $434,382.00 or any other sum; to the county of Yuba the sum of $544,952 or any other sum, or to the city and county of San Francisco the sum of $84,473 or any other sum.

Denies that said pretended assessment was apportioned to either or any of said counties in either or any of said sums.

Defendant denies that it now is or ever has been indebted to plaintiff for State or county or any taxes for the year 1885, or any other year, as set out in his said complaint or otherwise or at all. Denies that it is indebted to plaintiff for State or county or any taxes for for said—year for State taxes in the sum of $119,680 or any other sum; for county taxes of the county of Alameda in the sum
13 of $23,654.41 or any other sum; for county taxes of the county of Butte in the sum of $15,481.54 or any other sum; for county taxes of the county of Fresno in the sum of $24,237.97 or any other sum; for county taxes of the county of Merced in the sum of $15,849.97 or any other sum; for county taxes of the county of Nevada in the sum of $20,317.75 or any other sum; for county taxes of the county of Placer in the sum of $54,048.49 or any other sum; for county taxes of the county of Sacramento in the sum of $12,583.69 or any other sum; for county taxes of the county of San Joaquin in the sum of $10,727.14 or any other sum; for county taxes of the county of Santa Clara in the sum of $1,802.25 or any other sum; for county taxes of the county of Shasta in the sum of $34,445.73 or any other sum; for county taxes of the county of Sierra in the sum of $1,665.55 or any other sum; for county taxes of the county of Stanislaus [in] the sum of $5,186.10 or any other sum; for county taxes of the county of Sutter in the sum of $2,080.91 or any other sum; for county taxes of the county of Tehama in the sum
14 of $20,176.00 or any other sum; for county taxes of the county of Tulare in the sum of $4,152.69 or any other sum; for county taxes of the county of Yuba in the sum of $8,037.00 or any other sum, or for city and county taxes of the city and county of San Francisco in the sum of $886.04 or any other sum. Denies that it is indebted to plaintiff in the sum of five or any per cent. added to each or any of said sums, or any other sums, for non-payment of taxes or otherwise, or at all.

Defendant refers to and makes part of this subdivision the matter stated in subdivisions 3 to 36 of this answer.

And for further and separate answer defendant avers as follows:

II.

Defendant a corporation—Its place of business—Line of road—Stockholders.

The defendant is a corporation existing under the laws of the United States and of the State of California (as will hereafter more fully appear), and as such has been for many years past, and still is (except in the respect hereinafter stated), the owner of a line
15 of railroad known as the Central Pacific railroad, extending from the Pacific Ocean across the State of California and the State of Nevada to Ogden, in the Territory of Utah. The principal place of business of defendant now is, and for many years last past has been, in the city of San Francisco, State of California. Some of its stockholders and members now are, and ever have been, citizens of the United States, and some of its stockholders and members now are, and ever have been, citizens of the United States, resident in States other than the State of California.

III.

Length of road in the several counties.

The total length of said railroad in said State of California is 640.68 miles, and the length thereof in the respective counties through which it passes is as follows: In the county of San Francisco, 2.46 miles; in the county of Alameda, 83.52 miles; in the county of Santa Clara, 8.50 miles; in the county of San Joaquin, 56.75 miles; in the county of Sacramento, 41 miles; in the county of Placer, 112.75 miles; in the county of Nevada, 30.25 miles; in the county of Sierra, 2.15 miles; in the county of Yuba, 15.87 miles; in the
16 county of Sutter, 10 miles; in the county of Butte, 45 miles; in the county of Tehama, 40.54 miles; in the county of Shasta, 58.80 miles; in the county of Stanislaus, 22.63 miles; in the county of Merced, 36.75 miles; in the county of Fresno, 61.06 miles, and in the county of Tulare, 12.65 miles. The length of said road from the city of Sacramento, through the counties of Sacramento, Placer, Nevada, and Sierra, to the eastern boundary of said State, is 186.25 miles.

IV.

Purpose of the formation of the C. P. R. R. Co. of California.

On the 28th day of June, 1861, a corporation was formed and organized under the laws of the State of California under the corporate name of the Central Pacific Railroad Company of California. Said corporation was formed for the purpose of constructing, owning, and operating a line of railroad and telegraph, commencing at the city of Sacramento, in said State, and running thence through the counties of Sacramento, Placer, Sierra, and Nevada to the eastern boundary of said State, in the expectation that its proposed railroad

would, when constructed, constitute part of a line of railroad
17 extending from the Missouri river to the Pacific Ocean, which line, [as] was then supposed, was about to be constructed under the legislative supervision and authority of the Government of the United States, and which line of railroad was afterwards so constructed.

V.

Act of Congress of July 1st, 1862—Pacific railroad act.

On or about the 1st day of July, 1862, the Government of the United States undertook to construct, or to cause to be constructed, a line of railroad from the Missouri river to the Pacific Ocean, and to that end Congress passed an act entitled "An act to aid in the construction of a railroad from the Missouri river to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes." To said act defendant here refers by title and makes it a part of this answer. (See United States Statutes, vol. 12, page 489.)

By said act certain persons therein named were made and erected into a corporation under the name and style of the "Union
18 Pacific Railroad Company," and said corporation was authorized and empowered to construct, own, and operate a line of railroad and telegraph from the Missouri river to the Pacific Ocean.

VI.

Like privileges and immunities granted to defendant.

To facilitate the construction of said road, the Government of the United States, by said act of Congress, adopted the said Central Pacific Railroad Company of California as the instrument or agent of the United States, and conferred upon it the same powers and clothed it with the same privileges and immunities which it conferred upon and clothed the said Union Pacific Railroad Company with, except that the said Central Pacific Railroad Company of California was to commence the construction of said railroad at the Pacific Ocean and build east until it met the said Union Pacific railroad, building west.

VII.

Act of Congress of July 2d, 1864—Amendment.

On or about the 2d day of July, 1864, Congress passed an
19 act entitled "An act to amend an act entitled 'An act to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific Ocean, and to secure to the Government of the United States the use of the same for postal, military, and other purposes, approved July 1, 1862." To said act defendant here refers by title, and makes the same a part of this answer. (See 13 United States Statutes at Large, page 356.)

VIII.

Intent of Congress in passing acts of 1861 and 1864.

The intent and purposes of Congress in passing said acts was to secure the completion of a railroad from the Missouri river to the Pacific Ocean, and to secure the use thereof, for all time to come, to the Government of the United States for the transportation of its mails, troops, munitions of war, and public stores.

IX.

C. P. R. R. Co. accept terms offered by Congress.

Said Central Pacific Railroad Company of California filed in the Department of the Interior its acceptance of the terms and
20 conditions of said act of Congress of July 1st, 1861, within the time therein designated.

X.

Transfer of rights to W. P. R. R. Co.

On or about the 31st of October, 1864, said Central Pacific Railroad Company of California sold and assigned all its rights under the aforesaid acts to a corporation then existing under the laws of the State of California, and known as the Western Pacific Railroad Company, so far as said rights related to the construction of said railroad and telegraph between the cities of San Jose and Sacramento, in said State of California. Said assignment was ratified and confirmed by the United States by an act of Congress passed on the 3d day of March, 1865, entitled "An act to amend an act entitled 'An act to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes, approved July 1st, 1862, and to amend an act amendatory thereof approved July 2d, 1864.'" To said act defendant here refers by title, and makes the same a part of this answer. (See
21 13 United States Statutes at Large, page 504.)

XI.

Railroad completed.

The said line of railroad, from the Pacific Ocean to Ogden, in Utah Territory, was completed and put in operation in 1869, and has been in operation from that time until the present, and still is in operation, and the whole of the railroad mentioned in the said acts of Congress *have* long since been completed, and is now, in accordance with the spirit and intent of said acts of Congress, operated as one continuous line from the Missouri river to the Pacific Ocean, and is so operated and maintained for the uses and purposes mentioned in said acts, and the corporations in charge thereof, including this defendant, are agents of the Federal Government charged to carry out the purposes of said Government as expressed in said acts of Congress.

XII.

Consolidation.

In August, 1870, acting under the said acts of Congress, said Central Pacific Railroad Company of California and the said
22 Western Pacific Railroad Company formed themselves into one corporation under the name of the Central Pacific Railroid Company. Said company is the defendant herein, and as the agent and instrument of the Federal Government has from the completion of said railroad as aforesaid until the present time owned (except in the respect hereinafter stated) and operated said railroad under and by virtue of said acts of Congress, and for the uses and purposes therein mentioned.

XIII.

Indebtedness secured by mortgage.

The bonds loaned by the United States under said acts of Congress of July 1st, 1862, and July 2d, 1864, to said Central Pacific Railroad Company of California were about twenty-seven millions of dollars. No part of said loan, except a portion of the accruing interest thereon, has been paid, but the same now is, and for more than five years last past has been, outstanding. To secure the payment of the same the United States now have, and ever since the issue of said bonds have had, a lien by mortgage upon the
23 said railroad, its rolling-stock, fixtures, and franchises. By said act of Congress of July 2d, 1864, said Central Pacific Railroad Company of California was authorized to issue its bonds in an amount equal to said United States bonds, and to secure the payment of the same by a mortgage upon its said road, telegraph, franchises, and properties. Under the provisions of said act said bonds, to the amount of more than five thousand dollars per mile, were issued before the first day of January, 1875, and the payment of the same was secured by a mortgage made by said company upon its said railroad, rolling-stock, and franchises. Said bonds are unpaid and outstanding, but are not yet due, and the same now are, and ever since their issue have been, secured by the mortgage aforesaid. Many of said bonds now are, and ever have been, owned by citizens and *bona fide* residents of the State of California, while other of said bonds now are, and ever have been, owned by citizens of the United States, *bona fide* residents of States other than California.

24 XIV.

Land mortgage.

To further aid in the construction of its railroad, hereinbefore described, the defendant, on the first day of October, A. D. 1870, made, executed, and delivered a mortgage covering all its said lands acquired under the acts of Congress aforesaid in the sum of ten million of dollars. Said mortgage was duly acknowledged and filed for record in the office of the county recorder of the several counties in

which said land is situated, a copy of which is hereto annexed, marked "Exhibit A," and made a part hereof. To secure the payment of said mortgage the defendant issued bonds in the amount of ten millions of dollars. A part of said bonds have been redeemed, but there still remains due and unpaid $4,630,000, which is a valid and subsisting lien upon all of said lands. Said unpaid bonds now are and ever have been owned and held by citizens and *bona fide* residents of the State of California; and some of said bonds now are and ever have been owned by citizens of the United States,
25 *bona fide* residents of States other than the State of California.

The lands covered by said land mortgage are situate in the States of California and Nevada and the Territory of Utah. The aggregate amount of said lands in the State of California is 405,934.26 acres. Said lands are situated in the following counties in the quantity herein set out, as follows: In Sacramento county, 178 acres; in Placer county, 19,862 acres; in Nevada county, 28,042 acres; in Sierra county, 7,007 acres; in Yuba county, 23,642 acres; in Sutter county, 2,518 acres; in Butte county, 120,115 acres; in Tehama county, 97,324 acres; in Shasta county, 68,117 acres; in Colusa county, 476 acres; in El Dorado county, 31,927 acres; in Plumas county, 6,664 acres; in Yolo county, $\frac{26}{100}$ acres.

XV.

Mortgaged lands. Mode and manner of assessment. Payment of taxes.

The lands mentioned in the preceding subdivision are not and never have been in any way connected with the railroad business of the defendant. They are agricultural and grazing lands held, owned, and used for farming and grazing purposes.

26 Said lands and all of them, for each of the years 1880, 1881, 1882, 1883, 1884, and 1885, were assessed by the assessors of the respective counties in which they are situated at their full cash value, and no deduction from said value was made or allowed on account of said mortgage or the indebtedness secured thereby; on the contrary, the laws of the State of California under which said assessors acted in making said assessments prohibited any deduction from said values on account either of the mortgages or the indebtedness secured thereby.

In each of said years the defendant paid in full, at the time the same became payable, all the taxes levied upon said lands, amounting in the aggregate, for State, county, and municipal purposes, to about $160,000.00.

The laws of the State of California then and ever since in force provide that in the assessment and valuation of lands of like character and situation and in every respect similar both in quality and use, not owned by railroad or other quasi public corporations,
27 a mortgage thereon by which a debt is secured shall, for the purposes of assessment and taxation, be deemed and treated as an interest in the property affected thereby, and that in the assessment and valuation of such property for the purposes of taxa-

tion the value of said mortgages shall be deducted therefrom and the owner of said lands or property only assessed and taxed for the value in excess of the value of the mortgage.

To assist the assessor in the performance of his duties and to enable him to make the deductions aforesaid the laws of the State of California make it the duty of the recorder of each county, annually, on or before the first Monday in April, to transmit to the assessor a complete abstract of all mortgages by which any debt is secured remaining unsatisfied on the records of his office at 12 o'clock meridian on the first Monday of March of said year; and it is further provided by said laws that should any such list be found to contain any instrument relating to lands situated in more than one county it shall be the duty of the assessor to transmit to the
28 State board of equalization all information relating thereto, and it shall be the duty of the State board to attach an apportionment of valuation of such instrument to be assessed in each county, and to transmit to the assessor of each county mentioned as affected in said instrument a statement of valuation of assessment to be levied against said instrument in such county. (Political Code, sect. 3678.)

In the matter of the valuation of its said lands for the purposes of taxation the defendant is and ever has been deprived of all the benefits of the said laws which provide for the deduction of indebtedness secured by mortgage from the valuation of lands by reason of the provisions of section 4 of article XIII of the constitution of the State of California and the action of assessors in pursuance thereof, while all natural persons and all corporations not quasi-public within the State of California are entitled to receive and do receive the full benefit of said laws and the deductions required to be made thereunder.

XVI.

Property belonging to the U. S. exempt from taxation.

29 That under said constitution all property belonging to the United States is exempt from taxation.

XVII.

Assessment by State board of equalization.

On the 15th day of August, 1885, the State board of equalization of the State of California, pretending to act under and by virtue of the powers conferred upon it by section 10 of article XIII of the constitution of the State of California, did make a pretended assessment for the purposes of taxation for the fiscal year of said State then next ensuing upon the franchise, roadway, road-bed, rails, and rolling-stock of said railroad against defendant. Said pretended assessment was not made separately upon the franchise, roadway, road-bed, rails, and rolling-stock, or any properties of said railroad, but all of said properties were blended together in making said assessment, which assessment was then and there so entered upon the

minutes of said board. Said assessment is the assessment upon which the several taxes mentioned in the complaint herein are based, and no other assessment than the aforesaid was ever
30 made of said property or any part thereof for said fiscal year. Said assessment included all property and kinds of property mentioned in section 3665 of the Political Code of California as amended March 9th, 1883, except depots, stations, shops, and buildings erected upon the space covered by the right of way, which last-mentioned property was assessed, as provided in said section, by local assessors.

XVIII.

State board pretended to assess the whole of said property to defendant.

The State board of equalization, in making the said pretended assessment, pretended to assess to and against defendant the full cash value of said railroad, roadway, road-bed, rails, rolling-stock, and franchises, as described in said section 3665, without deducting therefrom the value of the mortgage, or any part thereof, given and existing thereon as aforesaid to secure the indebtedness of said company to the holders of said bonds, notwithstanding, as defendant avers, they had full knowledge of the existance of such mortgage.

XIX.

31 State board did not treat said mortgage as an interest in the property.

In making said pretended assessment the said State board of equalization did not deem or treat said mortgages as an interest in said property, but did assess the whole value of said property to the defendant in the same manner it would have done had there been no mortgages thereon.

XX.

Authority exercised by State board violates provisions of Fourteenth Amendment.

Under the constitution of the State of California the board of supervisors of the several counties of the State constitute boards of equalization for their respective counties, whose duty it is to equalize the valuation of the taxable property in the county, except the franchise, roadway, road-bed, rails, and rolling-stock of railroads operated in more than one county of the State, and to such boards the owners of all property, except as above stated, have the right and privilege to apply for the correction of their assessments, and have the right and privilege of a hearing before the said local boards of equalization. By the provisions of the constitution of Cal-
32 ifornia and the laws in pursuance thereof this right and privilege, or any right or privilege, to be heard in relation to assessments, is denied to defendant in respect to the property in question. All of which, defendant avers, is contrary to the provision of the

Fourteenth Amendment to the Constitution of the United States, which declares that no State shall deny to any person within its jurisdiction the equal protection of the laws.

XXI.

Further violation of the Fourteenth Amendment.

The power conferred upon the State board of equalization by section ten of article XIII of the constitution of California violates the provision of the Fourteenth Amendment to the Constitution of the United States, which declares that no State shall deprive any person of life, liberty, or property without due process of law; for that said section, as to such power, is self-executing and complete, and does not provide for personal or other notice to be given to the parties to be affected by the exercise of such power, and does not provide for a full or any opportunity of time, place, or tribunal for such parties to be heard in defense of their rights, and
33 hence, under and by said provision of the constitution of the State of California, the liability of owners of such property to taxation and the amount thereof may be fixed without notice to them or an opportunity to he heard.

XXII.

Further discrimination.

The provisions of section four of the constitution of the State of California providing for the assessment of the property of railroad and other quasi-public corporations is in contravention of the provisions of said Fourteenth Amendment of the Constitution of the United States, in that it discriminates against such corporations, in this that whereas, under said section four of said article XIII of the constitution of the State of California, if the property of natural persons or corporations, not quasi public, has a mortgage, lien, or incumbrance thereon they are not liable to assessment or taxation upon such property, but only upon the value of their interest in such property over and above the value of such mortgage, lien, or incumbrance, whereas, in the case of the property of railroad
34 and other quasi-public corporations, no such allowance or deduction is made, had, or allowed with respect to any mortgage, lien, or incumbrance there may be upon such property, and also in this that while the tenth section of article XIII of the constitution of the State of California provides the same mode for the assessment of the franchises, roadway, road-bed, rails, and rolling-stock of all railroads operated in more than one county, whether such property be owned by railroad or other quasi-public corporations or by private corporations or by natural persons, yet section four of article XIII of said constitution permits or allows indebtedness secured by mortgage, trust deed, or otherwise to be deducted from the value of such property only when it is owned by natural persons or corporations not quasi public, and denies such deduction when the property is owned by railroad or other quasi-public corporations.

XXIII.

Section 10 of article XIII of said constitution of California provides that all property, except the franchise, roadway, road-bed, rails, and rolling-stock of all railroads operated in more than
35 one county in the State shall be assessed in the county, city, city and county, town, township, or district in which it is situated in the manner prescribed by law.

The laws of said State prescribe that all property, except that above mentioned, shall be assessed in the county in which it is situated by an assessor elected by the people of such county.

The assessors of the several counties in the State of California have, as the defendant is informed and believes, and so avers, in each year since the adoption of said constitution, assessed all moneys, credits, bonds, and stock, dues, franchises, and all other matters and things, real, personal, and mixed, capable of private ownership, situated in their said counties, and all dues and credits held, owned, or in the possession of persons resident in said county to such persons.

Said assessors for each of said years have assessed to the owners and holders thereof in their respective counties the indebtedness of the defendant secured by the mortgage herein mentioned, but never have, nor does the law permit them so to do, made any deduction from the assessment of any of the property of this
36 defendant on account of the assessments made as aforesaid to the holders of such indebtedness.

XXIV.

Further discrimination.

All owne-s of railroad property operated in more than one county, by virtue of said section ten of article XIII, are denied any protection from the laws of the State of California, which—

(*a.*) Require that property shall be taxed in proportion to its value.

(*b.*) Require such proportions to be ascertained by a general law.

(*c.*) Require that before liability be fixed an opportunity to be heard must be given.

(*d.*) Give an appeal from the assessor to boards of equalization.

(*e.*) Require the assessment to be made in the county, and prohibit its being made in localities distant from the *situs* of the property.

(*f.*) Which prescribe mode and manner of the assessment.

And defendant avers that at and before and ever since the adoption of the constitution of California now in force there were
37 and are existing under the laws of said State corporations of various kinds, formed for the purpose of and actually operating and doing business and holding and using and operating property in more than one county in said State, and that at all of said times there were and there now are divers natural persons, residents of said State, operating property in more than one county in said State, and that at all of said times there were and now are

railroads owned by corporations formed under the general laws of said State, and also by natural persons, which are only operated in one county; that by the provisions of section ten of article XIII of said State constitution persons operating railroads in more than one county in the State have been singled out from all other persons operating property in more than one county and denied the right, common to all other persons, to appeal for relief from overvaluations of their property by assessors to the local board of equalization, and denied the rights and privileges accorded by the laws to all other persons in that respect.

38 Corporations in said State of California now are and ever have been formed under general laws relating thereto, and railroad and all other corporations, except public corporations formed or organized for the government of a portion of the State, now are and ever have been designated by the laws of California as private corporations. Under the provisions of the laws relating to the formation of private corporations such corporations may be formed for any purpose for which individuals or natural persons may lawfully associate themselves together; and there now exists in California, and ever have existed, corporations formed under said laws for fire, marine, mutual life, health, and accident insurance, building, constructing, and operating railroads, wagon roads, telegraphs, bridges, ferries, wharves, chutes, and piers; and for constructing and operating canals; for the purposes of acquiring lands in large tracts and distributing them as homesteads among the corporators; for savings and loans, for mining, for the sale and distribution of water in cities and towns; for manufacturing, mechanical, and agricultural purposes; for benevolent, charitable, and educational purposes; for cemeteries, agricultural fairs, and various other purposes.

39 In said State of California there now are, and for more than three years last past have been, various railroads owned, operated, and controlled either by individuals, partnerships, or by private corporations other than railroad corporations, to wit, by mining and manufacturing corporations. There now is, and for more than three years last past has been, a railroad in use and operation extending from the city of Marysville, in the county of Yuba, to the town of Oroville, in the county of Butte, in said State, a distance of twenty-seven miles, which said road now is and ever has been operated in more than one county in this State, and is of the same *guage* as the road of this defendant, and has ever been operated for like uses and purposes.

Said road with all its equipments now is, and for more than three years last past has been, in the ownership and under the operation and control of one N. D. Rideout, a citizen of the United States and resident of the State of California.

There now is, and for more than three years last past has been, a railroad extending from the town of Santa Cruz, on the Pacific Ocean, and in the county of Santa Cruz eastward through
40 said county and into the county of Monterey, in the town of Pajaro, a distance of about twenty-one miles. Said road now

is, and for a long time past has been, owned, operated, and used for like purposes for which the defendant's road is owned, operated, and used, and that the same now is, and for a long time past has been, in the ownership and operated by the Pacific Improvement Company, a private corporation formed under the laws of the State of California, which said corporation is not and never has been a railroad or quasi public corporation.

There now are, and for more than five years last past have been, divers other railroads owned and operated in said State by corporations other than railroad corporations, and by individuals and partnerships, and that all of said corporations, individuals, and partnerships are the owners of lands which are assessed by the local assessors of the various counties in which such lands are situated, and all are entitled under the laws of said State to the deductions provided for in said laws, and, as said defendant, upon information and belief, avers, have been allowed such deductions.

XXV.

System adopted by said board violates rules of equity.

41 The State board of equalization, in making said pretended assessment of the said roadway of defendant, did willfully and designedly include in the valuation of said roadway the value of fences erected upon the land of coterminous proprietors, and did willfully and designedly value the said roadway at a greater value than the value of other property similarly situated, and greater than its actual value, upon the ground that such increased valuation should be made because the title of defendant thereto was acquired by condemnation.

The value of such fences, which were not the property of defendant, nor the property of the owners of said roadway, and the increased value affixed to the roadway by the system adopted by the board, are blended in said pretended assessment, and there is no mode or means by which such illegal valuation can be separated from those which may be legal.

42 Defendant, upon its information and belief, avers that the said State board of equalization adopted a system of valuation in respect to all the property mentioned and referred to in section 10 of article XIII of the constitution, which defines the power of said board, which system was by said board intended to and which did operate unequally, and which was intended to and did violate the rule prescribed by said section—that all of such property should be assessed at its actual value. The system so adopted was applied by the said board in making said pretended assessment of said property, and in making the assessment of all property in the State over which the pretended authority of said board extended.

Said system was to include within the value of the roadway the value of the fences owned and possessed by coterminous proprietors, and to value said roadway at double its actual value, because the right thereto was acquired by condemnation. Said system relative

to the rolling-stock of railroads was to value the same at sixty per cent. above its actual cost when new, and to value such rolling-stock at double its actual value. Said system relative to the fran-
43 chise was to value it at $2,000 per mile when the actual value, as the board well knew, of said franchise as an entirety did not exceed twenty-five dollars. Said system as to the valuation of other property to be assessed by the said board was to value it at double its actual value. Said system was by the said board adopted, and was by it applied in making all assessments made by it with the intent and purpose, wrongfully and unlawfully, to cause the owners of property assessed by it to pay double the rate of State and county taxes paid by the owners of property assessed by the local assessors. And defendant avers, upon its information and belief, that the said board applied the said system in making the pretended assessment against the property upon which the taxes mentioned in the complaint are based; and defendants, upon its information and belief, avers that the said State board of equalization, in making said pretended assessment, did not value any of said property at its actual value, but did intentionally, and for the purpose of making defendant pay an unequal proportion of State and county taxes, assess the said property at double its actual value.

44 And defendant avers that the general rule in this State has been to assess property at not over two-thirds its cash or actual value, and that this rule was adopted and acted upon by all local assessors in the State and by the said State board, except in the exercise of the power conferred by section 10, art. XIII of the State constitution, for said fiscal year, and that all property, save that assessed by the said State board under said section, has been valued and assessed at one-third less than its actual value, and that the taxes have been collected on valuations so made.

XXV. (*a.*)

Value of ferry-boats blended with other values.

The western terminus of the said railroad of defendant is in the city of San Francisco, on the west side of the bay of San Francisco. The distance across the said bay is five miles, and the whole thereof is part of the navigable waters of said bay. The cars of the company are transported from the end of the railroad track of said road on the eastern side of said bay to the end of the railroad track
45 on the western side of said bay on steam ferry-boats belonging to the defendant, built, owned, and constructed for that purpose, and are of great value. For more than four years past the defendant has been the owner of two steam ferry-boats, one of the tonnage of 1,566 tons and one of the tonnage of 1,012 tons, and during the whole of that four years last past have been of a class which are by law required to be registered, and now are, and for more than four years last past have been, duly registered and enrolled in the city and county of San Francisco, State of California. The State board of equalization, in making said pretended assessment of the said

roadway, road-bed, rails, and rolling-stock of defendant, did willfully and designedly include in the valuation thereof the value of said boats, and the value of said boats is blended in said pretended assessment with the value of said roadway, rails, road-bed, and rolling-stock, and there is no means by which such value can be separated from the valuation placed by said board upon said roadway, road-bed, rails, and rolling-stock, or either of them.

XXVI.

46 Defendant's franchise a Federal one.

And defendant, upon its information and belief, avers that, under and by virtue of the said several acts of Congress, defendant became, and ever since has been, a Federal corporation, and has held its franchise and exercised all its corporate powers under the Government of the United States.

XXVII.

Corporate powers in part derived from acts of Congress.

And defendant, upon its information and belief, avers that if, by virtue of the several acts of Congress herein referred to, it did not become a Federal corporation, yet it holds, under the Government of the United States, all the corporate powers and franchises granted to it by the said several acts of Congress as the trustee of said Government and for the governmental uses and purposes specified in said acts.

XXVIII.

That the franchise of defendant is not subject to State taxation.

47 Under and by virtue of the said several acts of Congress hereinbefore referred to the defendant was, by the Government of the United States, selected as the means and instrument of that Government to construct the railroad hereinbefore described, and to keep and maintain the same in repair, to the end that the said Government might, when occasion required, use the same for the transportation of its armies and military stores, and for such other purposes as said Government might, in the execution of its powers, desire to use the same. The Government of the United States has never given to the State of California the right to lay any tax upon the franchise, existance, or operations of defendant. Such a tax would hinder and impede the lawful operations of the Government of the United States, would hinder, delay, and prevent the defendant from performing, as aforesaid, its obligations to the United States, and would nullify and prevent the enforcement of said several acts of Congress.

XXIX.

Whole franchise assessed.

Said pretended assessment made by the State board of equali-

zation is upon all of the franchises of defendant, and the said
48 board, in valuing the same, included the value of all the franchises and corporate powers held and exercised by defendant under said acts of Congress.

XXX.

Tax upon the franchise blended with tax upon other property.

The State board of equalization in making said pretended assessment included and assessed the franchise of defendant, and in making said pretended apportionment included in the valuation affixed to the property of defendant the value thereof, but such value is not separately stated in said apportionment, nor upon any assessment roll or delinquent list, but such value is in said pretended apportionment and upon the assessment roll and delinquent list blended with the values affixed to the roadway, road-bed, etc., and cannot on either be distinguished or separated from such other values, and the tax upon said franchise is in like manner blended with and cannot be separated from the tax on said roadway, road-bed, etc.

XXXI.

Valuation excessive.

49 Neither the franchise, roadway, road-bed, rails, or rolling-stock were assessed by the State board of equalization in said pretended assessment at their actual value or in proportion to their value, but were wilfully and intentionally assessed greatly in excess and out of proportion to such value, and greatly in excess of and out of proportion to the rate at which all other property in said State is valued for the purposes of taxation, to wit, one hundred per cent. in excess thereof.

XXXII.

Sole authority upon which tax is based.

Said pretended assessment is the only assessment of said property, and the pretended tax for non-payment of which this action is brought is founded upon said pretended assessment and upon no other assessment.

XXXIII.

State tax void.

The defendant, upon its information and belief, avers that the State board of equalization never at any time did, for the said fiscal year, fix or determine any rate of taxation for State purposes,
50 and that the sum and the whole thereof claimed in the complaint for State taxes for said fiscal year is illegal and void.

XXXIV.

Plaintiff's causes of action based upon assessment by State board of equalization.

On the 15th day of August, 1885, the State board of equalization of the State of California, pretending to act under and by virtue of the powers conferred upon it by section ten of article XIII of the constitution of the State of California, did make a pretended assessment for the purposes of taxation for the fiscal year of said State then next ensuing upon the franchise, roadway, road-bed, rails, and rolling-stock of the railroad hereinbefore described and known as the Central Pacific railroad against this defendant; that said pretended assessment was not made separately upon the franchise, roadway, road-bed, rails, and rolling-stock or any properties of said railroad, but all of said properties were blended together in making said assessment, which assessment was then and there so entered upon the minutes of said board. Said pretended assessment is the assessment upon which the several taxes mentioned in plain-
51 tiff's complaint are claimed to be due, and that no other assessment than such pretended assessment was ever made against or upon said property or any part thereof.

XXXV.

Tender.

On the tenth day of December, 1885, the defendant, while then and now denying all liability upon said pretended assessment and claiming that all of the proceedings had in relation thereto were in violation of law and the rights of this defendant, tendered and offered the said plaintiff the sum of $225,008.08 in United States gold coin in part payment of the tax claimed, with an agreement that the receipt of said sum should not prejudice the plaintiff in any legal rights, and defendant now brings said sum into court and offers the same to plaintiff, and, if refused by plaintiff, subjects the said sum to such orders or judgments as the court may make in the premises; and defendant avers that of the sum so tendered it tendered specifically for the benefit of the State and on the amount claimed by the State the sum of $71,808.00, and on account
52 of the various county taxes claimed it tendered sums as follows, to wit:

For the county of Alameda the sum of $14,192.68.
For the county of Butte the sum of $9,288.91.
For the county of Fresno the sum of $14,542.79.
For the county of Merced the sum of $9,509.98.
For the county of Nevada the sum of $12,190.65.
For the county of Placer the sum of $32,429.09.
For the county of Sacramento the sum of $7,550.22.
For the county of San Francisco the sum of $531.62.
For the county of San Joaquin the sum of $6,436.28.
For the county of Santa Clara the sum of $1,081.35.

For the county of Shasta the sum of $20,667.56.
For the county of Sierra the sum of $999.33.
For the county of Stanislaus the sum of $3,111.66.
For the county of Sutter the sum of $1,248.55.
For the county of Tehama the the sum of $12,105.60.
For the county of Tulare the sum of $2,491.61.
For the county of Yuba the sum of $4,822.20.

And ever since has and now keeps said tender good.

XXXVI.

No rules or regulations.

Said State board of equalization has never at any time make or adopted any rule or regulation relative to the assessment or valuation of railway property of any kind, nor has it ever made or adopted any rule to govern or regulate its proceedings in the
53 exercise of the powers conferred upon it by section 10 of article XIII of the constitution of California.

H. S. BROWN,
Attorney for Defendant.
S. W. SANDERSON AND
CREED HAYMOND,
Of Counsel.

54 *Verification to Answer.*

STATE OF CALIFORNIA, }
City and County of San Francisco, } ss:

E. H. Miller, Jr., being first duly sworn, on oath says that he is an officer, to wit, the secretary, of the corporation defendant herein; that he has read the foregoing amended answer and knows the contents thereof; that the same is true of his own knowledge, except as to those matters therein stated on his own information or belief, and as to those he believes it to be true.

E. H. MILLER, JR.

Subscribed and sworn to before me this 18th day of March, A. D. 1886.

[NOTARIAL SEAL.] E. B. RYAN,
Notary Public in and for the City and County of San Francisco, State of California.

55 "EXHIBIT A."

This indenture, made this the first day of October, A. D. 1870, between the Central Pacific Railroad Company, a railroad corporation duly incorporated and organized under and pursuant to the laws of the State of California, party of the first part, and Charles Crocker and Silas W. Sanderson, both of the city of Sacramento and State of California, parties of the second part, witnesseth:

That whereas by an act of the Congress of the United States of America, approved on the first day of July, 1862, entitled "An act to

aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," and an act amendatory thereof, approved on the second day of July, 1864, there was granted to the Central Pacific Railroad Company of California, a railroad corporation then being duly incorporated and organized under and pursuant to the laws of the State of California, a
56 large body of the public lands of the United States, to wit: Every alternate section of public land, designated by odd numbers, to the amount of ten alternate sections per mile on each side of the railroad and telegraph line of said company running from Sacramento, in the State of California, to their junction with the railroad and telegraph line of the Union Pacific Railroad Company at or near Ogden, in Utah Territory, a distance of seven hundred and forty miles, not sold, reserved, or otherwise disposed of by the United States, and to which no pre-emption or homestead claim had attached at the time the line of said railroad was definitely fixed, and not containing minerals other than coal and iron, for the purpose of aiding in the construction of said railroad and telegraph line, and to secure the safe and speedy transportation of the mails, troops, munitions of war and public stores of the United States;

And whereas by an act of Congress of the United States of America, approved on the twenty-fifth day of July, 1866, entitled "An act granting lands to aid in the construction of a railroad and
57 telegraph line from the Central Pacific railroad, in California, to Portland, in Oregon, there was granted to the California and Oregon Railroad Company, a railroad corporation then duly incorporated and organized under and pursuant to the laws of the State of California, a large body of the public lands of the United States, to wit: Every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile (ten on each side) of the railroad and telegraph line of said company, running from a point on the line of the Central Pacific railroad, at or near Roseville, in the county of Placer and State of California, to the northern boundary of said State, a distance of two hundred and forty-six miles, for the purpose of aiding in the construction of said railroad and telegraph line, and to secure the safe and speedy transportation of the mails, troops, and munitions of war and public stores of the United States, with a further provision to the effect that when any of said alternate sections shall appear to have been previously granted, sold, re-
58 served, occupied by homestead settlers, pre-empted, or otherwise disposed of, other lands, designated as aforesaid, may be selected by said company in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections, designated by odd numbers, as aforesaid, nearest to and not more than ten miles beyond the limits of said first alternate sections;

And whereas heretofore, to wit, on the twenty-second day of June, A. D. 1870, the said Central Pacific Railroad Company of California, pursuant to a statute of the State of California in such case made and provided, was consolidated with the Western Pacific Railroad

Company, a railroad corporation then duly incorporated and organized under the laws of the State of California, and ow-ing and operating a railroad and telegraph line from the city of Sacramento to the cities of Oakland, in the State of California, and San José in the name and style of the "Central Pacific Railroad Company;"

And whereas heretofore, to wit, on the twentieth day of August, A. D. 1870, the said last-named corporation, the said California and Oregon Railroad Company, the San Francisco, Oakland
59 and Almeda Railroad Company, a railroad corporation then existing, duly incorporated and organized under the laws of said State, and owning and operating a railroad running from San Francisco, through the city of Oakland, to Haywards, in Alameda county, a distance of twenty-five miles, and the San Joaquin Valley Railroad Company, a railroad corporation duly incorporated and organized under the laws of said State, and then existing by virtue thereof, owning a line of railroad and telegraph, running from a point on the road of the said Central Pacific Railroad Company, at Lathrop, in the county of San Joaquin, to the town of Visalia, in the county of Tulare, in said State, a distance of one hundred and fifty-two miles, said railroad and telegraph being then only partially constructed, did, pursuant to a statute of said State in such case made and provided, amalgamate and consolidate themselves into a new corporation under the corporate name of the "Central Pacific Railroad Company," which last-named corporation is the said party of the first part to this indenture:

And whereas, by force and effect of said consolidation, the
60 said party of the first part has succeeded to the title to all of lands and now owns and holds the same;

And whereas the said party of the first part desires to raise money for the purpose of completing the construction and equipment of said railroad and telegraph line from the town of Roseville aforesaid to the northern boundary of the State of California, and also for the purpose of completing the construction and equipment of said railroad and telegraph line from the town of Lathrop aforesaid to the town of Visalia aforesaid, and also for the payment of the debts and liabilities of said party of the first part, and to that end has, by its board of directors, considered and determined to issue the bonds of said company, in the sum of one thousand dollars each, to the number of ten thousand, payable to the said parties of the second part, or to the holder thereof, twenty years from date, with interest at the rate of six per cent. per annum, payable semi-annually on the first days of April and October, of each year ensuing its date, payable, both principal and interest, in United States gold coin, in the city of New York;
61 and, to secure the payment of said bonds, did further consider and determine to mortgage the lands hereinbefore described, except so much thereof as is or shall be included in the rights of way of the railroads and telegraph lines of said company, as defined and granted by the acts of Congress aforesaid, or is being or shall be used in the construction or operation thereof, or for the track, yards, depot grounds, buildings, or erections thereof, to the

said parties of the second part in trust for the holders of said bonds;

And whereas it was further considered and determined that said bonds, and each of them, should bear date on the first day of October, A. D. 1870, and should have attached thereto forty interest coupons, numbered from one to forty, inclusive, in the following form:

$——.	Central Pacific Railroad Company.	No. ——.
	For Land Bond No. ——.	
Interest coupon for thirty dollars, due ——— 1st, 18—.		
Payable in the city of New York.		
	——— ———, *Secretary.*	

62 And whereas it was further considered and determined that said bonds, and each of them, should be of the following tenor and form:

No. ——. Land Bond $1,000.

of the

Central Pacific Railroad Company.

The Central Pacific Railroad Company acknowledges itself indebted to Charles Crocker and Silas W. Sanderson, both of the city of Sacramento and State of California, or to the holder hereof, in the sum of one thousand dollars, gold coin of the United States, which sum it promises to pay to the holder hereof, in the city of New York, twenty years from the date hereof, with interest thereon at the rate of six per cent. per annum, payable semi-annually on the first days of April and October of each year ensuing the date hereof, both principal and interest payable in United States gold coin.

63 This bond is one of ten thousand, each of which is for the same sum of money and of like tenor, and all of which are secured by a mortgage to Charles Crocker and Silas W. Sanderson, as trustees for the holders thereof, on all the lands granted by the United States to the Central Pacific Railroad Company of California by an act of Congress, approved on the first day of July, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," and an act amendatory thereof, approved on the second day of July, 1864; also all the lands granted to the California and Oregan Railroad Company by an act of Congress, approved on the twenty-fifth day of July, 1866, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific railroad, in California, to Portland, in Oregon" (which lands are now owned by the said Central Pacific Railroad Company by force and effect of a consolidation between said companies, pursuant to a statute of the State of California in

such case made and provided), save and except so much of
64 said lands as are or shall be included in the right of way for the railroad and telegraph lines of the said Central Pacific Railroad Company, or is being or shall be used in the construction or operation thereof, or for track, yards, depot grounds, buildings, or other erections thereof, and also so much thereof as may have been sold previous to the date of said mortgage, to wit, the first day of October, 1870.

In testimony whereof said company has caused its corporate seal to be hereunto affixed, by its president and secretary, on this the first day of October, A. D. 1870.

Now, therefore, this indenture witnesseth that the said party of first part, for the purpose of securing the payment of the sums of money mentioned in said bonds and the interest thereon, and in consideration of the premises, and also for and in consideration of the sum of one dollar, to the said party of the first part in hand paid by the parties of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, released, enfeoffed, conveyed, and confirmed, and by these presents does grant, bargain, sell, re-
65 lease, enfeoff, convey, and confirm unto the said parties of the second part, as trustees, and to their successors and survivor, and their assigns, forever all and singular the said several sections of land so as aforesaid granted by said acts of Congress, and also all the estate, right, title, interest, claim, and demand whatsoever, at law or in equity, of, in, or to the same, or any part or parcel thereof which the said party of the first part now has, holds, owns, or is entitled to, or hereafter may or shall acquire, have, hold, own, or be or become entitled to by force or virtue of the said acts of Congress, saving, excepting, and reserving, all parts and parcels of said lands as have been sold heretofore, or which are or shall be included in the rights of way of the said railroads and telegraph lines of said company as defined and granted by the acts of Congress aforesaid, or used for the construction or operation thereof, or for the track, yards, depot grounds, buildings, or erections thereof; to have and to hold all and singular the lands hereby granted or intended to be granted, and each and every part and parcel thereof, with the appur-
66 tenances thereunto belonging, unto the said parties of the second part and to their successors and survivor and their assigns, forever, as trustees, for the uses and purposes and upon the trusts, terms, conditions, and agreements in this indenture set forth and declared:

Provided always, and these presents are upon the express conditions, that if the said party of the first part shall well and truly pay, or cause to be paid, to the holders of said bonds, and every of them, the principal sums of money therein mentioned, according to the tenor thereof, with the interest thereon, at the times and in the manner hereinbefore provided, according to the true intent and meaning of these presents, then and from thenceforth this indenture and the estate hereby granted shall cease and determine, and all the right, title, and interest in any and all property hereby conveyed to the parties of the second part not then disposed of under the powers

hereby conferred shall revert to and vest in the said party of the first part.

This indenture further witnesseth that these presents and
67 the said bonds are made, executed, and delivered upon the trusts, terms, conditions, and agreement following, that is to say:

That all the lands hereinabove conveyed and mortgaged shall be under the sole and exclusive management and control of the said party of the first part, who shall have full power and authority to make contracts for the sale of the same at such price, on such credit or terms of payment, and such other conditions as shall be agreed on by the said parties of the first and second part, and as shall seem to them best calculated to secure the payment in full of all the bonds issued as hereinbefore provided until entry or foreclosure by the trustees, as hereinafter provided. But no title to any tract of land contracted to be sold by the said party of the first part shall be given until the whole of the purchase-money of said tract shall be paid to said parties of the second part, or their successors or survivor, in cash or in said bonds or overdue coupons thereof. And for this purpose it is agreed that the said party of the first part and said trustees shall cause all such lands, as they shall from time to time become subject to sale, to be carefully examined and
68 surveyed, and shall affix to each tract or parcel such price as in their judgment shall be most judicious, having in view the interests of all parties; and said lands shall be and remain at all times thereafter open for sale to any person who may desire to purchase and pay therefor the prices being, nevertheless, at all times subject to revision and alteration by the said parties, and the party of the first part may reserve from sale any lands necessary for depot grounds or other purposes connected with the construction or operation of the said railroad or telegraph.

The purchaser of any such land shall be at liberty to pay for the same in the aforesaid bonds or overdue coupons at par, and when any tract or parcel of said lands shall have been purchased and paid for, either in bonds, coupons, or cash, as hereinbefore provided, the same shall be conveyed by the said parties of the first and second part- to the purchaser in fee-simple, and shall by such conveyance be absolutely and forever released from any and all lien or incumbrance for or on account of said bonds, or any other
69 debt or obligation of the said party of the first part. The said trustees shall and will cancel and discharge each and every bond and the coupons thereon, and all overdue coupons which they may receive in payment for land or by purchase, by defacing the seal of the corporation, perforating the signatures of the president and secretary, and drawing lines across each of the interest coupons on receipt thereof; and all bonds and coupons received in payment for lands as aforesaid shall, when so cancelled, be delivered to the said party of the first part.

The said trustees shall apply the proceeds of the sales made by them of lands hereby conveyed to the sole and exclusive purpose of the payment of the bonds provided for and issued in conformity to

the terms of this indenture; and for this purpose all such avails shall, from time to time as the same are realized, be used in the purchase of such bonds in the market, to be cancelled so long as purchases thereof can be made at par; and whenever such bonds cannot be purchased at that rate said trustees shall advertise for proposals to sell such bonds to them in two newspapers published in the
70 city of New York and one newspaper published in each of cities of San Francisco and Sacramento, and after receiving such proposals they shall have power to purchase such bonds at the lowest terms so offered. The said party of the first part doth hereby covenant and agree to pay to the holders of said bonds respectively the said principal sums of money therein mentioned and the interest thereof, as aforesaid. If any default shall be made in the payment either of principal or interest on any of said bonds for six months after demand at the place of payment, when the same shall become due, then the said trustees may, on being requested by the holders of at least one hundred thousand dollars of such bonds, enter into and take possession of any of the lands above conveyed and foreclose this mortgage, and may sell at public auction so much of said lands as may be necessary to discharge all arrears of such interest, and apply the proceeds, after deducting the costs, charges, and expenses of such entry, foreclosure, and sale, to the payment of such arrears of interest. If any such default shall continue for one year from the time of such demand and refusal the principal sum of all
71 said bonds then outstanding shall become due and payable, and the said trustees may enter into and take possession of all said lands above by these presents mortgaged or conveyed, foreclose this mortgage, and sell at public auction all said lands, or so much thereof as may be necessary, first giving at least six months' previous notice of the time and place of sale in at least one newspaper published in the city of New York and in one published in each of the cities of San Francisco, Sacramento, Virginia, and Salt Lake, and they shall apply the proceeds thereof, after deducting the costs, charges, and expenses of such last-mentioned entry, foreclosure, and sale, to the payment of all said bonds then outstanding and the interest accrued thereon, rendering the overplus, if any there shall be, unto the said party of the first part. In case of any sale upon any such foreclosure, or at any such public auction, the said trustees shall make, execute, and deliver a conveyance of the said lands so sold, which shall convey to the purchasers all the rights and privileges of the said party of the first part in and to the property so sold to the same extent as the same shall have been previously enjoyed and held by the
72 said party of the first part. If, after any such entry shall be made or any such foreclosure proceeding shall be commenced for the satisfying of interest only, as above provided, and before the lands are sold thereon, the said party of the first part shall pay and discharge such interest and deliver the coupons therefor to the said trustees and pay all the costs, charges, and expenses incurred in such entry and foreclosure and the proceedings thereon, then and in every such case the said trustees shall discontinue their proceedings thereon and restore to the said party of the first part all such lands,

to be held subject to the above conveyance and mortgage and subject to all the provisions, terms, and conditions of these presents in like manner as if such entry had not been made nor such foreclosure proceedings commenced.

In case a vacancy shall happen in the number of trustees hereinbefore mentioned as parties of the second part in this indenture, or if one of them shall be temporarily absent, the remaining trustees shall, while said vacancy or absence exists, have all the rights, exercise all the powers, and discharge all the duties devolving on
73 the said trustees by this instrument; but, as soon as it conveniently may be done, such vacancy shall be filled by the nomination by the remaining trustee of some proper person to fill such vacancy, which nomination shall be submitted to the board of directors of said company, and, if approved by them, the person so nominated and approved immediately shall become a trustee under this instrument. If said nomination is not approved, another person shall be nominated by said remaining trustee, and in like manner submitted for approval, and so on till three nominations shall have been made; but, if three successive nominations shall be made and none of them shall be approved by said board, said vacancy shall be filled by a committee of three persons selected, one by said remaining trustee, one by said board of directors, and a third by the two thus selected, and the person appointed trustee by a majority of the committee shall be and remain a trustee under this instrument; and the person regularly appointed a trustee to fill a vacancy in either of the forms above specified shall, from and after his said appointment and his acceptance of the appoint-
74 ment, become vested with the same estate, powers, rights, and interests, and charged with the same duties and responsibilities as if he had been one of the original trustees, parties of the second part named in and executing this instrument; and the prior remaining trustee may and shall execute such conveyances and instruments as may be proper or necessary to vest the same in such new trustee jointly with him, or to furnish evidence of such vesting. If at any time either of the said trustees shall resign his place as trustee, by a proper deed or writing to that effect, and such resignation shall be accepted by the said party of the first part, then and in every such case the place of such resigning trustee thereupon shall become and be vacant. Whenever all the bonds which shall have been made and issued by the said party of the first part under and in conformity to the provisions of this indenture, with the interest thereon, together with all the expenses incurred by the said trustees in the execution of the trust herein and hereby created, shall have been fully paid, the said trustees shall reconvey to the said party of the first part all and singular the said lands then in
75 the hands of the said trustees, and not before that time sold or disposed of in the execution of the trust hereby created. In case the said trustees shall at any time have any trust-moneys on hand, derived from the sale of the lands hereby conveyed, which will not be required to meet any immediate liabilities of the company, to which said moneys are by these presents devoted, the said

moneys shall be deposited on interest with some bank or trust company, in the city of San Francisco or Sacramento, subject to be drawn by checks signed by the trustee or such one of them as they may designate. All the books of the said company and of the trustees relating to the lands hereby conveyed shall be mutually open to the inspection of said company and said trustees. It shall be the duty of said trustees to certify and deliver to the said party of the first part the said bonds as the same from time to time shall be demanded, issued, or used by the said party of the first part.

And it is hereby mutually agreed by and between the parties hereto that the said parties of the second part, and their survivor and successors, and their heirs, executors, and administrators,
76 shall not be answerable for the acts, omissions, or defaults of each other, nor for anything short of their own gross negligence or willful misfeasance.

It is hereby declared by the parties to this indenture that all the provisions of said acts of Congress, so far as they are applicable, are hereby made and shall be deemed and taken to be a part of this instrument, and the said provisions, in all that concerns the sale and disposal of the said lands hereby conveyed to the parties of the second part, are to be observed and strictly and faithfully carried out and fulfilled. And the said party of the first part covenants and agrees to and with the said parties of the second part that the said party of the first part shall and will at any and all times hereafter, and from time to time, execute acknowledge, and deliver, under its corporate seal, to the said parties of the second part, and their survivor or successors, — and all such other or further assurances, deeds, mortgages, obligations, transfers, indentures, and instruments in writing and shall and will do and perform all such other or further acts or things as shall or may be necessary or proper, or as their
77 counsel, learned in the law, shall deem necessary, proper, or expedient for the better or more effectually securing upon the above-conveyed and mortgaged premises the payment of the said bonds so to be issued and the interest due and to grow due thereon in manner aforesaid, or for carrying into effect the true intent, design, objects, and purposes of these presents.

In witness whereof the said party of the first part has caused these presents to be signed with its corporate name and sealed with its corporate seal by its president and secretary the day and year first above written.

[Seal Central Pacific Railroad Company.]

LELAND STANFORD,
President C. P. R. R. Co.
E. H. MILLER, JR.,
Secretary C. P. R. R. Co.

We accept the trust declared in the foregoing instrument.

CHARLES CROCKER, [SEAL.]
SILAS W. SANDERSON. [SEAL.]

78 (Endorsed:) Filed March 19th, 1886. Jas. J. Flynn, clerk, by L. J. Welch, deputy clerk.

79 *Petition for Removal.*

In the Superior Court, City and County of San Francisco, State of California.

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,
vs.
THE CENTRAL PACIFIC RAILROAD COMPANY, Defendant,
No. 17239.

To the honorable the superior court in and for the city and county of San Francisco, State of California:

Your petitioner, the Central Pacific Railroad Company, respectfully shows—

That your petitioner is the sole defendant in the above-entitled action now pending in this honorable court.

That said action was brought on the 10th day of March, 1886, the complaint therein having been duly filed on said date.

That the defendant has on this day, and before the filing of this petition, appeared in said action and filed an answer to the complaint of plaintiff.

That no term of this court has been held since this action, and this petition is filed before the term at which the cause could be first tried.

That no trial of said action has been had, and this petition is filed before the trial thereof.

80 That said action is a suit of civil nature at law, and arising under the Constitution and laws of the United States, and that the matter in dispute exceeds, exclusive of co-ts, the sum and value of five hundred dollars.

That said action is brought by the plaintiff to recover from the defendant on account of taxes claimed by the plaintiff to be due and payable from the defendant for State and county purposes, as will more fully appear by a reference to the plaintiff's complaint on file herein.

That the assessment described in the complaint and answer, and which the plaintiff in this action claims to be due and payable, is an assessment which the State board of equalization of the State of California pretended to make under and by virtue of the authority conferred upon the board by section 10 of article XIII of the State constitution.

That the defendant claims in this action that said provisions of the constitution of the State of California and the authority thereby conferred upon said State board of equalization violate the provisions of the Fourteenth Amendment to this Constitution of the United States in this, that its effect is to deprive the defend-

81 ant of its property without due process of law, and that under it the defendant is denied any protection from the general laws of the State of California, which—

First. Require that property shall be taxed in proportion to its value;

Second. Require such proportions to be ascertained by a general law;

Third. Require, before the liability is fixed, that the right to be heard must be given;

Fourth. Which give an appeal from the assessor to another tribunal;

Fifth. Require the assessment to be made in the county, and prevent its being made in localities distant from the *situs* of the property;

Sixth. Prescribe the mode and manner of the assessment; and—

Seventh. Which allow deductions from indebtedness secured by mortgage;

Eighth. Which require property to be assessed at its actual value.

That in the assessment and apportionment described and mentioned in the answer the franchise of the defendant and the whole thereof is included in the valuation and so blended with the
82 other assessments and valuations that it cannot be distinguished therefrom; and defendant claims in this action that, under and by virtue of the acts of Congress of July 1st, 1862, and July 2d, 1864 (which acts are referred to in said answer), the defendant was, by the Government of the United States, selected as an instrument and means of that Government to carry into execution the said several acts of Congress; and defendant further claims in this action that, under and by virtue of said several acts of Congress, the State has no power to impose a tax upon the franchise or operations of defendant, and that such tax violates the provisions of said several acts of Congress.

That prior to the 1st day of January, 1881, the defendant was indebted to divers persons, citizens of the United States, and many of them then and now citizens and *bona fide* residents of the State of California, and others of them then and now citizens and *bona fide* residents of other States of the Union, in large sums for moneys advanced to construct and equip its railroad described in the answer herein; that to secure the payment of such indebtedness the
83 defendant, long prior to the said day, executed and delivered a mortgage upon its railroad and all rolling-stock and appurtenances and upon a large number of tracts of land situated in different counties of the State of California, which said tracts of land then were, and ever since have been, the property of defendant; that said indebtedness exceeded, and still exceeds, three thousand dollars per mile of said road; that no part thereof has ever been paid except the accruing interest, and that the whole thereof is now, and since the execution of said mortgage has been, a valid and subsisting indebtedness against said company defendant, and has been and still [is] secured by said mortgage.

That the said pretended assessment, made as aforesaid by said State board of equalization, included the whole value of said property without any deduction therefrom; that under the constitution of the State of California when property, other than property such as is described in the complaint, is assessed and valued for the purposes of taxation it is the duty of the assessor making such valuation to deduct from the value of such property all indebtedness secured

by mortgage or lien upon the property; that the supreme
84 court of the State of California, the highest tribunal in said State, has decided that defendant (and others similarly situated) is not entitled to the protection of the Fourteenth Amendment of the Constitution of the United States, is not a means or instrument of the Federal Government; that its franchise is assessable and subject to taxation without the consent of the Federal Government, and that defendant and others similary situated are not entitled to the reduction hereinbefore referred to; that said decision of the supreme court of the State of California is in full force and is binding upon the inferior courts of the State, and especially upon this court; that the facts stated in the answer herein are true, which answer defendant refers to and makes part of this petition; that defendant is the corporation mentioned in the said several acts of Congress hereinbefore referred to, and that the railroad of defendant which has been assessed by the State board of equalization is the road constructed, operated, and maintained by defendant under the said several acts of Congress; that the plaintiff in said action will
85 rely upon the decision of the supreme court of the State of California, and that the construction of said several acts of Congress and of the Fourteenth Amendment to the Constitution of the United States is in this action disputed, and must necessarily be adjudged and determined herein, and that if said adjudication and determination be in favor of defendant and against that heretofore made by the supreme court of the State of California, such adjudication and determination will be conclusive in favor of defendant upon the merits of this action; that this is a suit arising under the Constitution and laws of the United States.

That your petitioner has made and filed with this petition a bond in the penal sum of five thousand dollars, with good and sufficient surety, conditioned that your petitioner shall enter in the circuit court of the United States, to be held in the district of California, in the ninth circuit, on the first day of its next session, a copy of the record in said suit, and shall pay all costs that may be awarded by the said circuit court, if said court shall hold that
86 said suit was wrongfully or improperly removed thereto, and also shall appear in said circuit court and enter special bail in said suit, if special bail was originally requisite therein, and shall do all such other and further appropriate acts as by the act of Congress, approved March 3, 1875, entitled "An act to determine the jurisdiction of circuit courts of the United States, and to regulate the removal of causes from State courts, and for other purposes," are requisite to be done upon removal of a suit in a circuit court of the United States from a State court.

And your petitioner is ready and willing to give such other and further bonds and to do all such other acts as may be lawfully required.

Your petitioner therefore prays that this honorable court will accept this petition and said bond and proceed no further in said suit, and that said suit may be removed into the circuit court of the United States in and for the district of California, in the ninth cir-

cuit, as required by statute of the United States in such cases made and provided.

And your petitioner will ever pray, etc.

H. S. BROWN,
Attorney for Petitioner.

S. W. SANDERSON AND
CREED HAYMOND,
Of Counsel.

87 (Endorsed:) Filed March 19th, 1886. Jas. J. Flynn, clerk, by L. J. Welch, deputy.

88 *Bond.*

In the Superior Court, City and County of San Francisco, State of California.

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,
vs.
THE CENTRAL PACIFIC RAILROAD COMPANY, Defendant. } No. 17239.

Know all men by these presents that we, The Central Pacific Railroad Company, as principal, and E. H. Miller, Jr., and S. P. Gage, as sureties, are held and firmly bound unto The People of the State of California, plaintiff, in the sum of five thousand dollars, to be paid to the said plaintiff; for which payment, well and truly to be made, we bind ourselves, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals this 12 day of March, 1886.

Whereas the above-entitled action was brought on or about the 10th day of March, 1886, in the superior court, in the city and county of San Francisco, State of California, and the same is now pending in said superior court by said The People of the State of California against said Central Pacific Railroad Company,
89 and is removable into the circuit court of the United States in and for the district of California, in the ninth circuit, under and by that certain act of Congress of the United States, approved March 3d, 1875, entitled "An act to determine the jurisdiction of circuit courts of the United States, and to regulate the removal of causes from State courts, and for other purposes."

And whereas said The Central Pacific Railroad Company has made and is about to file herewith its petition in said suit in said superior court in and for the city and county of San Francisco, State of California, for the removal of said suit in said circuit court of the United States to be held in the said district of California, in the ninth circuit:

Now, the condition of this obligation is such that if said The Central Pacific Railroad Company shall enter into such circuit court of the United States on the first day of its next session a
90 copy of the record in said suit, and shall pay all costs that may be awarded by the said circuit court, if said court shall hold that such suit was wrongfully or improperly removed thereto,

and also shall there appear and enter special bail in such suit, if special bail was originally requisite therein, and shall do all such other appropriate acts as by the said act of Congress are required to be done upon the removal of a suit from a State court into the circuit court of the United States, then this obligation to be void; otherwise to remain in full force and virtue.

THE CENTRAL PACIFIC RAILROAD COMPANY, [SEAL.]
By E. H. MILLER, JR., *Secretary.* [SEAL.]
[SEAL.] S. T. GAGE.
E. H. MILLER, JR.

STATE OF CALIFORNIA, }
City and County of San Francisco, } *ss:*

E. H. Miller, Jr., and S. T. Gage, the sureties in the foregoing obligation, being each sworn, each for himself says that
91 he is a resident of the State of California and a freeholder therein, and is worth the sum of five thousand dollars over and above all his just debts and liabilities, exclusive of property exempt by law from execution.

E. M. MILLER, JR.
S. T. GAGE.

Subscribed and sworn to before me this 12th day of March, 1886.
[NOTARIAL SEAL.] E. B. RYAN,
Notary Public in and for the City and County of San Francisco, State of California.

I hereby approve of the above sureties and accept and approve the foregoing bond.
Dated March 19th, 1886.

JOHN HUNT,
Judge Superior Court, City and County of San Francisco.

I, Jas. J. Flynn, county clerk of the city and county of San Francisco and *ex-officio* clerk of the superior court of said city and county, do hereby certify the foregoing to be a full, true, and correct
92 copy of the whole of the record of the within action, The People of the State of Cal. *vs.* The Central Pacific R. R. Co., now on file in my office.
In witness whereof I have hereunto set my hand and affixed the seal of the said superior court this 25th day of March, 1886.
[SEAL.] JAS. J. FLYNN,
County Clerk and ex-Officio Clerk of the Superior Court,
By D. J. GORDON,
Deputy Clerk.

(Endorsed:) Filed March 19th, 1886. Jas. J. Flynn, clerk, by L. J. Welch, deputy.

(Endorsed:) In U. S. cir. court, district of Cal'a. Filed March 29, 1886. L. S. B. Sawyer, clerk.

93 *Stipulation of Counsel.*

In the Circuit Court of the United States, Ninth Circuit, District of California.

THE PEOPLE OF THE STATE OF CALIFORNIA
vs.
THE CENTRAL PACIFIC RAILROAD COMPANY. } No. 4014.

It is hereby stipulated by the parties to the above-entitled action that a trial by jury is hereby waived, and that said cause shall be submitted upon the assessment roll for the year 1885–'6, in so far as it relates to the taxes claimed in the complaint herein, and upon the testimony heretofore taken and submitted in this court in other actions against the same party and against the Southern Pacific Railroad Company, the San Pueblo and Tulare Railroad Company, the Northern Railroad Company, and the California Pacific Railroad Company, which testimony shall be treated as given in this case, and as though all the facts related as well to the assessment and taxes for the year
94 1885–'6 as though said year had been mentioned in said testimony, except the testimony relating to the taxation of fences, which, for the purposes of this case and by the consent of the defendant, is omitted.

San Francisco, California, July 14, 1886.

CREED HAYMOND,
Attorney for Defendant.
E. C. MARSHALL,
Att'y Gen'l and Att'y for Pl'ff.

Endorsed: Filed July 15th, 1886. L. S. B. Sawyer, clerk.

95 *Findings.*

In the Circuit Court of the United States, Ninth Circuit, District of California.

THE PEOPLE OF THE STATE OF CALIFORNIA
vs.
THE CENTRAL PACIFIC RAILROAD COMPANY. } No. —.

The above-entitled cause having, on the — day of July, 1886, been brought on to a hearing before the court, without a jury, the said parties, by stipulation in writing, having waived a jury, and the evidence introduced by the respective parties having been fully considered, the court finds the facts in issue in said action as follows:

I.

That on the 15th day of August, in the year 1885, the State board of equalization assessed the property of defendant, hereinafter referred to and in form hereinafter set out, at the sum of $22,000,000, and apportioned said assessment as alleged in said complaint, and upon which taxes were levied as stated in the complaint.

II.

Defendant's organization—Existence and character.

96 In May, 1852, the Legislature of the State of California passed an act entitled "An act to grant the right of way to the United States for railroad purposes," which act is found in Stat. of Cal., 1852, p. 150, and is herein referred to and made part of this finding.

III.

On the 1st day of July, 1862, Congress passed an act entitled "An act to aid in the construction of a railroad from the Missouri river to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes;" which act is found in the United States Statutes at Large, vol. 12, page 489, *et seq.*, and which act is herein referred to and made part of this finding.

IV.

Said Central Pacific Railroad Company of California within due time filed in the Department of the Interior its acceptance of the terms and conditions of said act of Congress of July 1, 1862.

V.

97 On the 3d day of March, 1863, Congress passed an act entitled "An act to establish the gauge of the Pacific railroad and its branches," which act is found in the United States Statutes at Large, vol. 12, page 807, and which act is herein referred to and made part of this finding.

VI.

In the month of March, 1863, the Legislature of the State of California passed an act entitled "An act to authorize the board of supervisors of the county of San Joaquin to take and subscribe two hundred and fifty thousand dollars to the capital stock of 'The Western Pacific R. R. Co.,' and to provide for the payment of the same and other matters relating thereto." Said act is found in Stats. of Cal., 1863, p. 80, *et seq.*, and is herein referred to and made part of this finding. In the month of April of same year the Legislature passed an act entitled "An act to authorize the board of supervisors of the city and county of San Francisco to take and subscribe one million dollars to the capital stock of 'The Western Pacific R. R. Co.'
98 and 'The Central Pacific Railroad Co.,' and to provide for the payment of the same, and other matters relating thereto," which act is found in Stats. of Cal. for 1863, p. 380, and is herein referred to and made part of this finding. Said Legislature, in the same month and year, passed an act entitled "An act to authorize the county of Placer to subscribe to the capital stock of 'The C. P. R. R. Co. of California,' and to provide for the payment of the same and other matters relating thereto," which act is found in Stats. of Cal., 1863, p. 145, and is herein referred to and made part of this finding. Numerous acts of a similar nature are found scattered through the statutes of California.

VII.

On the 4th day of April, 1864, the Legislature of the State of California passed an act entitled "An act to aid in carrying out the provisions of the Pacific railroad and telegraph act of Congress, and other matters relating thereto," which act is found in the statutes of California for 1863–'4, at page 471, *et seq.*, and which act is herein referred to and made part of this finding.

99 VIII.

On the 2d day of July, 1864, Congress passed an act entitled "An act to amend an act entitled an act to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific Ocean, and to secure to the Government of the United States the use of the same for postal, military, and other purposes, approved July 1, 1862," which act is found in the United States Statutes at Large, vol. 13, page 536, *et seq.*, and which act is herein referred to and made part of this finding.

IX.

On the 31st day of October, 1864, said Central Pacific Railroad Company of California sold and assigned all its rights under the aforesaid acts to a corporation then existing under the laws of the State of California, and known as the Western Pacific Railroad Company, so far as said rights related to the construction of said railroad and telegraph between the cities of San Jose and Sacramento, in said State of California.

X.

100 On the 3d day of March, 1865, Congress ratified and confirmed said assignment by an act entitled "An act to amend an act entiled 'An act to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes,' approved July 1, 1862, and to amend an act amendatory thereof, approved July 2, 1864," which act is found in the United States Statutes at Large, vol. 13, page 504, *et seq.*, and which act is herein referred to and made part of this finding.

XI.

In August, 1870, acting under the said acts of Congress, said Central Pacific Railroad Company of California and the said Western Pacific Railroad Company formed themselves into one corporation under the name of the Central Pacific Railroad Company. Said company is the defendant in this action, and is a corporation under the laws of the State of California, except in so far as its organization, existence, and character may be affected by the Federal or State statutes in these findings referred to.

101 XII.

Defendant has complied with the provisions of said acts, and there now is in operation a continuous line of railroad from the Missouri river to the Pacific Ocean, the defendant owning and operating the portion thereof from Ogden, in the Territory of Utah, to San Francisco, in the State of California.

XIII.

On the 7th day of May, 1878, Congress passed an act entitled "An act to alter and amend the act entitled 'An act to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific Ocean and to secure to the Government the use of the same for postal, military, and other purposes,' approved July 1, 1864, in amendment of said first-named act," which act is found in vol. 20, United States Statutes at Large, page 56, *et seq.*, and which act is herein referred to and made part of this finding.

XIV.

The total length of said railroad in said State of California is 640.68 miles, and the length thereof in the respective
102 counties through which it passes is as follows: In the county of San Francisco, 2.46 miles; in the county of Alameda, 83.52 miles; in the county of Santa Clara, 8.50 miles; in the county of San Joaquin, 56.75 miles; in the county of Sacramento, 41 miles; in the county of Placer, 112.75 miles; in the county of Nevada, 30.25 miles; in the county of Sierra, 2.15 miles; in the county of Yuba, 15.87 miles; in the county of Sutter, 10 miles; in the county of Butte, 45 miles; in the county of Tehama, 40.57 miles; in the county of Shasta, 58.80 miles; in the county of Stanislaus, 22.63 miles; in the county of Merced, 36.75 miles; in the county of Fresno, 61.06 miles, and in the county of Tulare, 12.65 miles. The length of said road from the city of Sacramento, through the counties of Sacramento, Placer, Nevada, and Sierra to the eastern boundary of said State, is 186.25 miles.

XV.

The roadway of defendants varies in width from thirty to four hundred feet.

103 XVI.

The assessment—Mode and manner.

Within due time the secretary of the defendant filed with the State board of equalization the sworn statement required by section 3664 of the Political Code of California.

XVII.

Indebtedness secured by mortgage.

The bonds loaned by the United States under said acts of Con-

gress of July 1st, 1862, and July 2d, 1864, to said Central Pacific Railroad Company of California were about twenty-seven millions of dollars. No part of said loan, except a portion the accruing interest thereon, has been paid, but the same now is, and for more than five years last past has been, outstanding; to secure the payment of the same the United States now have, and ever since the issue of said bonds have had, a lien by mortgage upon the said railroad, its rolling-stock, fixtures, and franchises. By said act of Congress of July 2d, 1864, said Central Pacific Railroad Company of California was authorized to issue its bonds in an amount equal to said United States bonds to secure the payment of the
104 same by a mortgage upon its said road, telegraph, franchises, and properties. Under the provisions of said acts said bonds to the amount of more than five thousand dollars per mile were issued before the first day of January, 1875, and the payment of the same was secured by a mortgage made by said company upon its said railroad, rolling-stock, and franchises. Said bonds are unapid and outstanding, but are not yet due, and the same now are, and ever since their issue have been, secured by the mortgage aforesaid. Many of said bonds now are, and ever have been, owned by citizens and *bona fide* residents of the State of California, while other of said bonds now are, and ever have been, owned by citizens of the United States, *bona fide* residents of States other than California.

XVIII.

Land mortgage.

To further aid in the construction of its railroad hereinbefore described the defendant, on the first day of October, A. D. 1870, made, executed, and delivered a mortgage covering all its said lands
105 acquired under the acts of Congress aforesaid in the sum of ten millions of dollars. Said mortgage was duly acknowledged and filed for record in the office of the county recorder of the several counties in which said land is situated, a copy of which is annexed to defendant's answer, marked "Exhibit A," and made a part thereof. To secure the payment of said mortage the defendant issued bonds in the amount of ten million dollars. A part of said bonds have been redeemed, but there still remain due and unpaid $4,630,000, which is a valid and subsisting lien upon all of said lands. Said unpaid bonds now are and ever have been owned and held by citizens and *bona fide* residents of the State of California, and some of said bonds now are and ever have been owned by citizens of the United States, *bona fide* residents of States other than the State of California,

The lands covered by said land mortgage are situated in the States of California and Nevada and the Territory of Utah. The aggregate amount of said lands in the State of California is 405,934.26 acres. Said lands are situated in the following counties in the
106 quantity herein set out, as follows: In Sacramento county, 178 acres; in Placer county, 19,862 acres; in Nevada county, 28,042 acres; in Sierra county, 7,007 acres; in Yuba county,

23,642 acres; in Sutter county, 2,518 acres; in Butte county, 120,115 acres; in Tehama county, 97,324 acres; in Shasta county, 68,177 acres; in Colusa county, 476 acres; in El Dorado county, 31,927 acres; in Plumas county, 6,664 acres; in Yolo county, $\frac{26}{100}$ acres.

XIX.

Mortgaged lands—Mode and manner of assessment—Payment of taxes.

The lands mentioned in the preceding subdivision are not, and never have been, in any way connected with the railroad business of the defendant. They are agricultural and grazing lands, held, owned, and used for farming and grazing purposes.

Said lands and all of them for each of the years 1880, 1881, 1882, 1883, 1884, and 1885 were assessed by the assessors of the respective counties in which they are situated at their full cash value,
107 and no deduction from said value was made or allowed on account of said mortgage or the indebtedness secured thereby. On the contrary, the laws of the State of California under which said assessors acted in making said assessments prohibited any deduction from said values on account either of the mortgages or the indebtedness secured thereby.

In each of said years the defendant paid in full, at the time the same became payable, all the taxes levied upon said lands, amounting, in the aggregate, for State, county, and municipal purposes, to about $160,000.00.

The laws of the State of California, then and ever since in force, provide that in the assessment and valuation of lands of like character and situation and in every respect similar, both in quality and use, not owned by railroad or other quasi-public corporations, a mortgage thereon, by which a debt is secured, shall, for the purposes of assessment and taxation, be deemed and treated as an interest in the property affected thereby; and that in the assessment and valuation of such property, for the purposes of taxation, the value
108 of said mortgages shall be deducted therefrom and the owner of said lands or property only assessed and taxed for the value in excess of the value of the mortgage.

To assist the assessor in the performance of his duties and to enable him to make the deductions aforesaid, the laws of the State of California make it the duty of the recorder of each county, annually, on or before the first Monday in April, to transmit to the assessor a complete abstract of all mortgages, by which any debt is secured, remaining unsatisfied on the records of his office at 12 o'clock meridian on the first Monday of March of said year; and it is further provided by said laws that should any such list be found to contain any instrument relating to lands situated in more than one county it shall be the duty of the assessor to transmit to the State board of equalization all information relating thereto; and it shall be the duty of the State board to attach an apportionment of valuation of such instrument to be assessed in each county, and to tansmit to the as-

sessor of each county mentioned as affected in said instru-
109 ment a statement of valuation of assessment to be levied against said instrument in such county. (Political Code, sect. 3678.)

In the matter of the valuation of its said lands for the purposes of taxation the defendant is and ever has been deprived of all the benefits of the said laws which provide for the deduction of indebtedness secured by mortgage from the valuation of lands by reason of the provisions of section 4 of article XIII of the constitution of the State of California, and the action of assessors in pursuance thereof, while all natural persons and all corporations not quasi public within the State of California are entitled to receive, and do receive, the full benefit of said laws and the deductions required to be made thereunder.

XX.

Property belonging to the U. S. exempt from taxation.

That under the said constitution all property belonging to the United States is exempt from taxation.

XXI.

Assessment by State board of equalization.

110 On the 15th day of August, 1885, the State board of equalization of the State of California, acting under and by virtue of the powers conferred upon it by section 10 of article XIII of the constitution of the State of California, did make a pretended assessment for the purposes of taxation for the fiscal year of said State then next ensuing upon the franchises, roadway, road-bed, rails, and rolling-stock and property of said railroad against defendant. Said pretended assessment was not made separately upon the franchises, roadway, road-bed, rails, and rolling-stock or any properties of said railroad, but all of said properties were blended together in making said assessment, which assessment was then and there so entered upon the minutes of said board. Said assessment is the assessment upon which the several taxes mentioned in the complaint herein are based, and no other assessment than the aforesaid was ever made of said property, or any part thereof, for said fiscal year. Said assessment included all property and kinds of property mentioned in section 3665 of the Political Code of California, as amended
111 March 9th, 1883, except depots, stations, shops, and buildings erected upon the space covered by the right of way, which last-mentioned property was assessed as provided in said section by local assessors, and except steamboats.

XXII.

State board pretended to assess the whole of said property to defendant.

The State board of equalization, in making the said pretended

assessment, pretended to assess to and against defendant the full cash value of said railroad, roadway, road-bed, rails, rolling-stock, and franchises as described in said section 3665, without deducting therefrom the value of the mortgage, or any part thereof, given and existing thereon as aforesaid to secure the indebtedness of said company to the holders of said bonds, notwithstanding they had full knowledge of the existence of such mortgage.

XXIII.

State board did not treat said mortgage as an interest in the property.

In making said pretended assessments, the State board of
112 equalization did not deem or treat said mortgages as an interest in said property, but did assess the whole value of said property to the defendant in the same manner it would have done had there been no mortgage thereon.

XXIV.

Under the constitution of the State of California the board of supervisors of the several counties of the State constitute boards of equalization for their respective counties, whose duty it is to equalize the valuation of the taxable property in the county, except the franchises, roadway, road-bed, rails, and rolling-stock of railroads operated in more than one county of the State, and to such boards, the owners of all property, except as above stated, have the right and privilege to apply for the correction of their assessments, and have the right and privilege of a hearing before the said local boards of equalization. By the provisions of the constitution of California, and the laws in pursuance thereof, this right and privilege, or any
right or privilege, to be heard in relation to assessments is
113 denied to defendant in respect to the property in question.

XXV.

The power conferred upon the State board of equalization by section ten of article XIII of the constitution of California is self-executing and complete and does not provide for personal or other notice to be given to the parties to be affected by the exercise of such power, and does not provide for a full or any opportunity of time, place, or tribunal for such parties to be heard in defense of their rights, and hence, under and by said provisions of the constitution of the State of California, the liability of owners of such property to taxation and the amount thereof may be fixed without notice to them or an opportunity to be heard.

XXVI.

Under section four of said article XIII of the constitution of the State of California, if the property of natural persons or corporations, not quasi public, has a mortgage, lien, or incumbrance thereon they are not liable to assessment or taxation upon such property,

114 but only upon the value of their interest in such property over and above the value of such mortgage, lien, or incumbrance, whereas, in the case of the property of railroad and other quasi-public corporations, no such allowance or deduction is made, had, or allowed with respect to any mortgage, lien, or incumbrance there may be upon such property, The tenth section of article XIII of the constitution of the State of California provides the same mode for the assessment of the franchises, roadway, road-bed, rails, and rolling-stock of all railroads operated in more than one county, whether such property be owned by railroad or other quasi-public corporations or by private corporations or by natural persons, yet section four of article XIII of said constitution permits or allows indebtedness secured by mortgage, trust deed, or otherwise to be deducted from the value of such property only when it is owned by natural persons or corporations not quasi public, and denies such deduction when the property is owned by railroad or other quasi-public corporations.

115 XXVII.

Section 10, article of XIII of said constitution of California provides that all property except the franchises, roadways, road-beds, rails, and rolling-stock of all railroads operated in more than one county in the State shall be assessed in the county, city, city and county, town, township, or district in which it is situated, in the manner prescribed by law.

The laws of said State prescribe that all property, except that above mentioned, shall be assessed in the county in which it is situated by an assessor elected by the people of such county.

The assessors of the several counties in the State of California have, in each year since the adoption of said constitution, assessed all moneys, credits, bonds, and stocks, dues, franchises, and all other matters and things, real, personal, and mixed, capable of private ownership, situated in their said counties, and all dues and credits held, owned, or in the possession of persons resident in said county to such persons.

116 Said assessors for each of said years have assessed to the owners and holders thereof, in their respective counties, the indebtedness of the defendant, secured by the mortgage herein mentioned, but never have, nor does the law permit them so to do, made any deduction from the assessment of any of the property of this defendant on account of the assessments made as aforesaid to the holders of such indebtedness.

XXVIII.

At and before and ever since the adoption of the constitution of California now in force there were and are existing under the laws of said State corporations of various kinds, formed for the purpose of and actually operating and doing business and holding and using and operating property in more than one county in said State, and at all said times there were and there now are

divers natural persons, residents of said State, operating property in more than one county in said State, and at all of said times there were and now are railroads owned by corporations formed under the general laws of said State, and also by natural
117 persons, which are only operated in one county. By the provisions of section ten of article XIII of said State constitution persons operating railroads in more than one county in the State have been singled out from all other persons operating property in more than one county and denied the right, common to all other persons, to appeal for relief from overvaluations of their property by assessors to the local board of equalization, and denied the rights and privileges accorded by the laws to all other persons in that respect.

Corporations in said State of California now are, and ever have been, formed under general laws relating thereto, and railroad and all other corporations, except public corporations formed or organized for the government of a portion of the State, now are, and ever have been, designated by the laws of California as private corporations. Under the provisions of the laws relating to the formation of private corporations such corporations may be formed for any purpose for which individuals or natural persons may lawfully associate themselves together; and there now exist in California, and
118 ever have existed, corporations formed under said laws for fire, marine, mutual life, health, and accident insurance, building, constructing, and operating railroads, wagon roads, telegraphs, bridges, ferries, wharves, chutes, and piers, and for constructing and operating canals; for the purpose of acquiring lands in large tracts and distributing them as homesteads among the corporators; for savings and loans, for mining, for the sale and distribution of water in cities and towns for manufacturing, mechanical, and agricultural purposes; for benevolent, charitable, and educational purposes; for cemeteries, agricultural fairs, and various other purposes.

In said State of California there now [are], and for more than three years last past have been, various railroads owned, operated, and controlled either by individuals, partnerships, or by private corporations other than railroad coporations, to wit, by mining and manufacturing corporations. There is now, and for more than three years last past has been, a railroad in use and operation extending from the city of Marysville, in the county of Yuba, to the
119 town of Oroville, in the county of Butte, in said State, a distance of twenty-seven miles, which said road now is and ever has been operated in more than one county in this State, and is of the same *guage* as the road of defendant, and has ever been operated for like uses and purposes.

Said road, with all its equipments now is, and for more than three years last past has been in the ownership and under the operation and control of one N. D. Rideont, a citizen of the United States and a resident of the State of California.

There now is, and for more than three years last past has been, a railroad extending from the town of Santa Cruz, on the Pacific Ocean, and in the county of Santa Cruz eastward through said

county and into the county of Monterey to the town of Pajaro, a distance of about twenty-one miles. Said road now is, and for a long time past has been, owned, operated, and used for like purposes for which the defendant's road is owned, operated and used, and that the same now is, and for a long time past has been, in the ownership and operated by the Pacific Improvement Company, a
120 private corporation formed under the laws of the State of California, which said corparation is not and never has been a railroad or quasi-public corporation.

There now are, and for more than five years last past have been, divers other railroads owned and operated in said State by corporations other than railroad corporations, and by individuals and partnerships, and that all of said corporations, individuals, and partnerships are the owners of lands which are assessed by the local assessors of the various counties in which such lands are situated, and all are entitled under the laws of said State to the deductions provided for in said laws, and have been allowed such deductions.

XXX.

Said pretended assessment made by the State board of equalization and the tax claimed is upon all of the franchises, the existence and operation of defendant, and upon all the franchises and corporate powers held and exercised by defendant, as well as its right to exist and operate.

121 XXIX.

The State board of equalization, in making said pretended assessment, included and assessed the franchises of defendant as aforesaid, and in making said pretended apportionment included in the valuation affixed to the property of defendant the value thereof, but such value is not separately stated in said apportionment, nor upon any assessment roll or delinquent list, but such value is in said pretended apportionment and upon the assessment roll, and blended with the values affixed to the roadway, road-bed, ect., and cannot, on either or otherwise, be distinguished or separated from such other values, and the tax upon said franchises, rights to exist and operate are in like manner blended with and cannot be separated from the tax on said roadway, road-bed, ect.

XXX.

Sole authority upon which tax is based.

Said pretended assessment is the only assessment of said property, and the pretended tax, for non-payment of which this action is brought, is founded upon said pretended assessment and
122 upon no other assessment.

XXXI.

On the 15th day of August, 1885, the State board of equalization of the State of California, pretending to act under and by virtue of

the powers conferred upon it by section ten of article XIII of the constitution of the State of California, did make a pretended assessment, for the purposes of taxation for the fiscal year of said State then next ensuing, upon the franchises, roadway, road-bed, rails, rolling-stock, property of the railroad hereinbefore described and known as the Central Pacific railroad, against this defendant; that said pretended assessment was not made separately upon the franchises, roadway, road-bed, rails, and rolling-stock, or any properties or things, but all of said properties and things were blended together in making said assessment, which assessment was then and there so entered upon the minutes of said board. Said pretended assessment is the assessment upon which the several taxes mentioned in plaintiff's complaint are claimed to be due, and that no other
123 assessment than such pretended assessment was ever made against or upon said property, or any part thereof.

XXXII.

That defendant was not, on the 15th day of August, 1885, or at any other time, indebted to plaintiff in the sum set out in the complaint, or in any other sum, on any account.

Conclusions of Law.

From the foregoing facts the court finds, as a conclusion of law, that the defendants are entitled to judgment in their favor with costs.

LORENZO SAWYER,
Circuit Judge.

Endorsed: Filed July 15, 1886. L. S. B. Sawyer, clerk.

124 *Judgment.*

In the Circuit Court of the United States, Ninth Circuit, District of California.

THE PEOPLE OF THE STATE OF CALIFORNIA
vs.
THE CENTRAL PACIFIC RAILROAD COMPANY. } No. 4014.

This cause having been tried by the court, a jury trial having been waived by the written stipulation of the parties duly filed with the clerk of the court, and the court having filed its findings of fact and ordered that judgment be entered herein in accordance therewith:

Now, therefore, it is considered and adjudged that the plaintiff take nothing by this action; that the defendant go hereof without day, and that the said defendant have and recover of and from said plaintiff its costs in this behalf expended, taxed at $—.

Judgment entered the 15th day of July, 1886.

L. S. B. SAWYER, *Clerk.*

125 A true copy.
Attested, &c.,
[SEAL.] L. S. B. SAWYER, *Clerk.*

126 *Certificate to Judgment-Roll.*

UNITED STATES OF AMERICA:

Circuit Court of the United States, Ninth Circuit, District of California.

PEOPLE OF THE STATE OF CALIFORNIA
vs.
CENTRAL PACIFIC RAILROAD COMPANY. } No. 4014.

I, Lorenzo S. B. Sawyer, clerk of the circuit court of the United States of the ninth judicial circuit within and for the district of California, do hereby certify that the foregoing papers hereto annexed constitute the judgment-roll in the therein-entitled action.

Witness my hand and the seal of said circuit court this 15th day of July, A. D. 1886.

[SEAL.] L. S. B. SAWYER, *Clerk*,
By F. D. MONCTON, *Deputy Clerk*.

Endorsed: Judgment-roll. Filed July 15, 1886. L. S. B. Sawyer, clerk, by F. D. Moncton, deputy clerk.

127 At a stated term, to wit, the July term, A. D. 1886, of the circuit court of the United States of America of the ninth judicial circuit in and for the district of California, held at the court-room in the city and county of San Francisco on Monday, the 12th day of July, in the year of our Lord one thousand eight hundred and eighty-six.

Present: The Honorable Lorenzo Sawyer, circuit judge.

Order that Hon. E. C. Marshall, Att'y Gen'l of State of Cal., be Ent'd of Record as Att'y for Pl'ff.

THE PEOPLE OF THE STATE OF CALIFORNIA
vs.
THE CENTRAL PACIFIC RAILROAD COMPANY. } No. 4014.

Ordered that Hon. E. C. Marshall, attorney general of the State of California, be, and he hereby is, entered as attorney of record for the plaintiff in the above-entitled action.

128 *Bond on Writ of Error.*

In the Supreme Court of the United States.

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff in Error,
vs.
THE CENTRAL PACIFIC RAILROAD COMPANY, Defendant in Error.

Know all men by these presents that we, Louis Marshall and H. A. Green are held and firmy bound unto The Central Pacific Railroad Company, defendant in error herein, in sum of five hundred dollars, lawful money of the United States of America, to be paid to said The Central Pacific Railroad Company, its successors or assigns;

to the payment of which, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by the presents.

Sealed with our seals. Dated this 28th day of July, 1886.

Whereas the above-named The People of the State of Cali-
129 fornia have prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered and entered by the circuit court of the United States of America for the district of California, in the cause entitled The People of the State of California *vs.* The Central Pacific Railroad Company, No. 4014:

Now, therefore, the condition of this obligation in such that if the above-named The People of the State of California, plaintiff in error, shall prosecute their said writ of error to effect and answer all costs if they shall fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and virtue.

LOUIS MARSHALL. [LEAL.]
H. A. GREENE. [SEAL.]

Signed, sealed, and delivered in the presence of—
F. D. MONCKTON.

UNITED STATES OF AMERICA, } ss:
District of California, }

Louis Marshall and H. A. Greene, being duly sworn, each for himself deposes and says that he is a householder in said district,
130 and is worth the sum of five hundred dollars, in lawful money of the United States of America, exclusive of property exempt from execution and over and above all debts and liabilities.

LOUIS MARSHALL.
H. A. GREENE.

Subscribed and sworn to before me this 28 [day] of July, 1886.
F. D. MONCTON,
Comm'r of U. S. Circuit Court, Dist. of Cal.

Endorsed: The form of the within bond and the sufficiency of the sureties thereon are hereby approved. Signed Lorenzo Sawyer, circuit judge. Filed July 28, 1886. L. S. B. Sawyer, clerk.

131 In the Circuit Court of the United States for the Northern District of California.

THE PEOPLE OF THE STATE OF CALIFORNIA } No. 4014.
vs.
THE CENTRAL PACIFIC RAILROAD COMPANY. }

I, L. S. B. Sawyer, clerk of the circuit court of the United States of the ninth judicial circuit in and for the northern district of California, do hereby certify that the foregoing one hundred and thirty written pages, numbered from 1 to 130, inclusive, are a full, true, and correct copy of the record and of all proceedings in the above and therein entitled cause, and that the same together constitute the return to the annexed writ of error.

Witness my hand and the seal of said circuit court this 2d day of September, A. D. 1886.

[The Seal of the Circuit Court, District of Cal'a.]

L. S. B. SAWYER, *Clerk.*

132 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States of the ninth judicial circuit in and for the district of California, Greeting:

Because in the record and proceedings and also in the rendition of the judgment of a plea which is in the said circuit court before you, between The People of the State of California, plaintiff in error, and The Central Pacific Railroad Company, defendant in error, a manifest error hath happened, to the great damage of the said plaintiff in error, as by his complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington, in the District of Columbia, on the second Monday of October next, in the said Supreme Court to be there and then held, that, the record and proceedings aforesaid be[ing] inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 28th day of July, in the year of our Lord one thousand eight hundred and eighty-six, and of the Independence of the United States the one hundred and eleventh.

[The Seal of the Circuit Court, District of Cal'a.]

L. S. B. SAWYER,
Clerk of the Circuit Court of the United States for the District of California.

The above writ of error is hereby allowed.

LORENZO SAWYER,
U. S. Circuit Judge Ninth Judicial Circuit.

133 [Endorsed:] No. 4014. United States Supreme Court. The People of the State of California, pl'ffs in error, *vs.* The Central Pacific Railroad Company, def't in error. Writ of error. Service of a copy of within admitted this 23 day of Aug., 1886. H. S. Brown, att'ys for def't in error. Filed September 2d, 1886. L. S. B. Sawyer, clerk.

The Answer of the Judges of the Circuit Court of the United States for the District of California.

The record and all proceedings of the plaint whereof mention is